

7A Am. Jur. 2d Automobiles § 198

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Automobiles and Highway Traffic

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IV. Equipment, Weight, and Size of Vehicles

B. Particular Matters Regulated

1. Particular Matters Regulated, In General

§ 198. Odometers—Civil actions by private persons

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West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  196

West's Key Number Digest, [Automobiles](#)  5(1), 5(2), 6, 7, 10, 11, 115

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[Validity, Construction, and Application of Odometer Requirement Provisions of Motor Vehicle Information and Cost Savings Act \(49 U.S.C.A. secs. 32701 to 32711\)](#), 198 A.L.R. Fed. 255

Forms

Forms regarding odometers, generally, see Am. Jur. Pleading and Practice Forms, Fraud and Deceit [[Westlaw® Search Query](#)]

A person who violates the Motor Vehicle Information and Cost Savings Act (Act) or a regulation prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or \$10,000, whichever is greater.¹ A private person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another

court of competent jurisdiction; such action must be brought not later than two years after the claim accrues.² The court in such an action must award costs and reasonable attorney's fees to the person when a judgment is entered for that person.³ Where the plaintiff in such an action obtains settlements with some defendants but not others, it has been held that the liability of the other defendants cannot properly be reduced by the amounts previously received by the plaintiff pursuant to the settlements,⁴ although there is authority to the contrary.⁵

Thus, proof of intent to defraud is required to prevail in private civil actions under the Act.⁶ The intent-to-defraud requirement is not jurisdictional,⁷ but rather is an element of the claim for relief under the Act, so that a failure to allege that the defendant intended to defraud as to a vehicle's mileage may result in the action's dismissal for failure to state a claim,⁸ although some courts have held that an allegation of intent to defraud in connection with an Act violation sufficiently states a claim, even when the intent to defraud does not relate to mileage.⁹ The requisite fraud may be inferred from a showing of constructive knowledge, recklessness, or gross negligence.¹⁰ A showing of mere negligence is not enough.¹¹ Liability may be predicated on oral as well as written representations.¹²

Under what has been termed the "remote purchaser" theory, an automobile buyer can sue, for violations of federal odometer regulations, not only the immediate seller but also any other person in the chain of title who may have been involved in the fraud. This theory finds some support in case law,¹³ but other courts have rejected it.¹⁴

In a private civil action under the Act, punitive damages may be awarded even though the award of actual damages was small.¹⁵

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Footnotes

1 49 U.S.C.A. § 32710(a).

2 49 U.S.C.A. § 32710(b).

Under the Act, a vehicle buyer could bring a civil action against an automobile dealer for the dealer's alleged efforts to defraud the state motor vehicles department by making misrepresentations on odometer disclosure statements and reassignment forms, given that the Act created a private right of action to penalize violations. *Nigh v. Koons Buick Pontiac GMC, Inc.*, 143 F. Supp. 2d 563 (E.D. Va. 2001).

Where a victim proves no actual damages, he or she may still recover the minimum penalty of \$1,500 for each violation. *Attorney General of Maryland v. Dickson*, 717 F. Supp. 1090 (D. Md. 1989).

However, no treble damages can be awarded without a showing of actual damages. *Aldridge v. Billips*, 656 F. Supp. 975 (W.D. Va. 1987).

The phrase "not later than two years after the claim accrues," which limits the time within which a private action may be brought under the Act, refers to the date on which the tampering with the odometer was discovered or should have been discovered, not to the date on which the tampering occurred. *Byrne v. Autohaus On Edens, Inc.*, 488 F. Supp. 276 (N.D. Ill. 1980); *Levine v. MacNeil*, 428 F. Supp. 675 (D. Mass. 1977).

3 49 U.S.C.A. § 32710(b).

4 *Ferris v. Haymore*, 967 F.2d 946 (4th Cir. 1992), as amended, (July 22, 1992).

5 *Rice v. Gustavel*, 891 F.2d 594 (6th Cir. 1989).

6 *Suits v. Little Motor Co.*, 642 F.2d 883 (5th Cir. 1981); *Walt Bennett Ford, Inc. v. Goyne*, 969 F.2d 603 (8th Cir. 1992), opinion corrected, (Aug. 7, 1992); *Huycke v. Greenway*, 876 F.2d 94, 13 Fed. R. Serv. 3d 94 (11th Cir. 1989).

The purchaser of a used automobile, who alleged that the seller had made a false odometer disclosure, failed to establish intent to defraud on the part of the seller, and thus could not recover in an action brought under the Act; three of the car's former owners testified that it had not been driven 75,000 miles, as the purchaser

contended, but rather was a low-mileage vehicle, and even if the odometer statement given by the seller was inaccurate, the seller had relied on statement given by the former owner from whom it purchased the vehicle, and nothing indicated that the seller had reason to believe that such statement was false. *Diersen v. Chicago Car Exchange*, 110 F.3d 481, 37 Fed. R. Serv. 3d 400 (7th Cir. 1997).

7 Bodine v. Graco, Inc., 533 F.3d 1145 (9th Cir. 2008).

8 Bodine v. Graco, Inc., 533 F.3d 1145 (9th Cir. 2008).

9 Owens v. Samkle Automotive Inc., 425 F.3d 1318 (11th Cir. 2005).

10 Leach v. Bishop Bros. Auto Auction, Inc., 624 F.2d 34 (5th Cir. 1980); *Daluz v. Acme Auto Body & Sales, Inc.*, 814 F. Supp. 242 (D. Conn. 1992); *Aldridge v. Billips*, 656 F. Supp. 975 (W.D. Va. 1987); *Stepp v. Duffy*, 654 N.E.2d 767 (Ind. Ct. App. 1995); *Carroll Motors, Inc. v. Purcell*, 273 S.C. 745, 259 S.E.2d 604 (1979). An automobile dealer, which was informed by the transferor of a car that its odometer had not been functioning, was, at the very least, grossly negligent or acted with reckless disregard for the truth in certifying to the buyer of the car that the odometer reading was true, and thus the dealer's intent to defraud could be inferred as a matter of law. *Ralbovsky v. Lamphere*, 731 F. Supp. 79 (N.D. N.Y. 1990).

11 Ray Kim Ford, Inc. v. Daoud, 750 F. Supp. 327 (N.D. Ill. 1990).

12 Ryan v. Edwards, 592 F.2d 756 (4th Cir. 1979).

13 Rice v. Gustavel, 891 F.2d 594 (6th Cir. 1989).

14 Ferris v. Haymore, 967 F.2d 946 (4th Cir. 1992), as amended, (July 22, 1992); *Tusa v. Omaha Auto. Auction Inc.*, 712 F.2d 1248 (8th Cir. 1983).

15 Hughes v. Box, 814 F.2d 498 (8th Cir. 1987); *Bishop v. Mid-America Auto Auction, Inc.*, 807 F. Supp. 683 (D. Kan. 1992).

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